

DISCIPLINARY GRIEVANCES

A. Elements of Just Cause

1. Timely action:

Especially if the lack of timeliness impairs the grievant/Union's ability to investigate or prepare a defense, and if it is not justified by continued investigation.

2. Fair investigation

Did employer seek an explanation from the grievant before imposing discipline? Did employer take other reasonable steps to investigate? Does the nature of the employer's investigation suggest that it simply went through the motions to justify a decision rather than to uncover the truth, or in an attempt to find evidence to support its actions only after the grievance was filed? *Would a proper investigation have changed the result?*

3. Precise statement of the charges

- a. Any reason the employer intends to rely on must be stated at time the discipline was imposed.
- b. Notice must disclose sufficient facts to support the action taken (ie., a mere listing of rules violated is insufficient.)
- c. Must be precise standard by which to measure the offense (ie., does CBA specify how much is "excessive absenteeism" or what "bad attitude" means?)

4. Opportunity to explain before discipline is imposed

Did employer meet with the grievant or otherwise give them an opportunity to explain their conduct before discipline was imposed? A failure to do so suggests a disregard for basic due process or "rush to judgement".

5. No double punishment

Having already imposed discipline, the Employer cannot cite the same alleged misconduct to support later disciplinary action.

6. Did grievant receive opportunity for correction?

- a. Did employer follow steps of progressive discipline prescribed by contract?
- b. If no steps prescribed by contract, did grievant receive reasonable opportunity for correction/rehabilitation (prior warnings before suspension/discharge)
- c. Was alleged misconduct "gross misconduct" as defined by contract or as generally understood to warrant summary discharge (theft, violence, dishonesty).

7. Reasonable Punishment

- a. Was punishment consistent with contractually prescribed penalties?
- b. Was punishment consistent with penalties imposed on other employees for similar misconduct or different misconduct of comparable magnitude?
- c. Was punishment proportionate to alleged misconduct?
- d. Did punishment take into account individual factors such as this grievant's intent or lack thereof; remorse; likelihood of rehabilitation or recidivism; emotional distress, disability, or other mitigating circumstances; service record; degree of fault; provocation, etc.

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8. Application of Rules

- a. Was rule reasonable, rationally related to legitimate business objectives?
- b. Was rule issued pursuant to contractually prescribed procedures (ie., with notice, input by Union).
- c. Was rule clear and did it unambiguously establish the scope of prohibited conduct and consequences of violations?
- d. Did the grievant have actual or constructive notice of the rule?

B. Insubordination

1. Employees should be advised of rule “obey now, grieve later.”
2. Narrow exceptions for health, safety.
3. Elements:
 - a. knowing, willful and deliberate refusal to obey;
 - b. an order that is explicit and clearly given, so that the employee understands its meaning and intent as a command;
 - c. an order that is reasonable and work-related;
 - d. an order given by someone who has and is understood by the employee to have appropriate authority to give the order;
 - e. a warning of the consequences of failure to obey.
 - f. An opportunity for “sober reflection” to correct the insubordinate behavior.

ANTICIPATING DISCIPLINE: KNOW YOUR WEINGARTEN RIGHTS!

As a Steward, you must assert your Weingarten Rights, and those of your members:

- Ask to be informed of the purpose of the meeting.
- Meet with the employee before the supervisor begins questioning the employee.
- If necessary, request clarification of a question before the employee responds.
- Offer advice to the employee on how to answer a question.
- Provide additional information to the supervisor after the meeting is over.

If called in to a “Weingarten” meeting, you should also:

- take detailed notes on the questions asked and the answers given during the meeting; and
- Help the employee remain calm during the meeting, and remind the employee to keep answers short and truthful and not volunteer additional information.